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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: M. Neil Examiner: S. Chowdhury
Serial No. 10/031,056 Group Art Unit: 2421
Filed: January 15, 2002 Docket No. RCA89577
Title: PROGRAM GUIDE PROCESSING
Customer No: 24498

APPELLANTS' BRIEF

MAIL STOP: APPEAL BRIEF - PATENTS
Commissioner for Patents
Post Office Box 1450
Alexandria, Virginia 22313-1450

Sir:

This brief is in furtherance of the Notice of Appeal in this case, timely filed on January 21, 2009. Appellants hereby appeal to the Board from the decision of the Examiner in the Office Action mailed on September 17, 2008 finally rejecting the pending claims 1-13. Accordingly; those claims are now on appeal.

Appellants request a four-month (4) extension under 37 C.F.R. 1.136(a) to submit this Brief.

Please charge Deposit Account 07-0832, for any fees owed for the submission of this Appellants' Brief and for the requested Extension of Time.

Appellants do not request an oral hearing.

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Thomson Licensing Inc., the assignee of record.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

The status of all of the claims remaining in the application, claims 1-13 is set forth in Appendix A of this Brief.

Claims 1-13 have been rejected under 35 U.S.C. 102(b) as being anticipated by Alexander (WO 99/04561).

IV. STATUS OF AMENDMENTS

All amendments prior to this Appeal have been entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 1

Claim 1 claims a method that begins with a determination of whether a cell for a channel grid has been highlighted (specification, page 17, lines 4-14, FIG. 6, steps 605, 610, 615). A determination is also made is a cell is highlighted in the program grid guide (specification, page 17, lines 15-19, FIG. 6, steps 620, 625). The method will have a program being broadcasted being displayed if a channel in the channel grid is being highlighted (specification, page 17, lines 9-14, FIG. 5B). The programming being

displayed will remain the same however if the program grid has different cells within the grid being selected (specification, page 17, lines 20-32, FIG. 5C).

CLAIM 7

Claim 7 claims an apparatus comprising a user control device (specification, page 4, lines 26-28, FIG. 1, 1125), a display window for displaying a video program (specification, page 7, lines 16-29, FIG. 1, 1155 coupled to a display device and as shown for FIGS. 4, 5A, 5B0. The apparatus also claims a control means for displaying a program guide (specification, page 7, lines 4-20, FIG. 1, 1112). The display of the programming shown in response to whether the channel grid or if the program guide is highlighted (specification, page 17, lines 1-32, FIGS. 5A, 5B).

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-13 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Alexander.

VII. ARGUMENT

REJECTION OF CLAIMS 1-13 UNDER 35 U.S.C. § 102(a)

In order to anticipate a claim under 35 U.S.C. § 102 (a), it is required that “the (entire) invention” (that is, all elements) must be described in the cited reference. This principal of “anticipation” as decided in various CAFC decisions are set forth in MPEP §2131 as follows:

“Thus, in order to anticipate a claim, the reference must teach every element of the claim. That is,

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

“The identical invention must be shown in as complete detail as is contained in the ----claim.” *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

“The elements must be arranged as required by the claim ---“, *In re Bond*, 910 F2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).”

THE PRINCIPAL CITED REFERENCE

The principal reference, Alexander, does not disclose “every element” of the independent claims 1 and 7 and, furthermore, the elements of the reference are not “arranged as required by the claim(s)”. The Alexander reference therefore does not anticipate the claims, whereby the Examiner has not established a prima facie case of anticipation under 35 U.S.C. 102(a). The Appellants

The present claimed arrangement provides a method of processing a program guide. A determination is made as to whether a cell in a channel grid of the program guide has been highlighted. A determination is made as to whether a cell in a program grid of the program guide has been highlighted. In response to the previous determining steps, a program content of a program currently being received by a channel indicated by the highlighted cell in the channel grid is displayed if the cell in the channel grid of the program guide has been highlighted. In response to the previous determining steps, the same program

content is continually displayed if the cell in the program grid of the program guide has been highlighted. The same programming content will continue to be displayed until a different cell corresponding to a different channel in the channel grid is highlighted. If the cell in the program grid of the program guide has been highlighted, the same program content will continue to be displayed until a different cell corresponding to a different channel in the channel grid is highlighted. Upon highlighting the different cell in the channel grid, the programming content of a second program which is currently being received by the different channel corresponding to the different cell that is highlighted is displayed. Alexander does not disclose or suggest these features.

Alexander describes a system and method for displaying and recording control interfaces that improve upon previous electronic programming guides. Improvements over previous electronic programming guides include: improved viewer interaction capabilities; improved viewer control of video recording; parental controls; improved television access by the viewer; improved product opportunities for commercial advertisers; improved product information access; creation of user profiles; and utilization of profiles for customization and advertisements (*see* Abstract).

Alexander neither discloses nor suggests that “the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” and “**upon highlighting the different cell** in said channel grid, the programming content of a second program which is currently being received by said **different channel** corresponding to the different cell that is highlighted **is displayed**” as recited in claim 1 of the present

arrangement. Alexander merely describes selecting a “lock/unlock” function to control how a Picture in Picture (PIP) screen displays programs. In Alexander, when the status is set to “unlock,” the PIP displays the program associated with the highlighted channel/program in the Grid Guide. As long as a channel in the channel grid and/or a current program in the program grid is selected, an associated program will be displayed. When the status is set to “lock,” the PIP display continues to display the same program content, regardless of what is highlighted/selected on the Grid Guide. Thus, in Alexander, the program content displayed is based on the setting of the lock/unlock function. In the locked mode, regardless of what is highlighted in the grid, the same programming content will be displayed. This is unlike the present claimed arrangement in which the displayed program content is dependent on whether a cell in the program grid or a cell in the channel grid is highlighted. Program content of a highlighted channel is displayed when **a cell in the channel grid of the program guide** has been highlighted. The program content of the last tuned program is displayed when **a cell in the program grid of the program guide** is highlighted. The present claimed arrangement can scan channels while moving through the **channel grid**. While navigating through the **program grid**, a lock is placed so that “the same program content” can be displayed. Alexander does not disclose or suggest channel and program grids that perform the features recited in the present claimed arrangement. In Alexander, the channel and program grid operate in the same manner based on the setting of the lock/unlocked status. Therefore, Alexander neither discloses nor suggests “continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the

program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” and “upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in claim 1 of the present arrangement.

Moreover, Alexander neither discloses nor suggests “determining whether a cell in a channel grid of the program guide has been highlighted” or “determining whether a cell in a program grid of the program guide has been highlighted” as recited in claim 1 of the present arrangement. In Alexander, the channel grid and program grid operate in the same manner and are part of a “Grid Guide.” A user may select a certain channel or program on the Grid Guide in Alexander. However, Alexander does not disclose or suggest “determining whether a cell in a channel grid of the program guide has been highlighted” or “determining whether a cell in a program grid of the program guide has been highlighted” as recited in claim 1 of the present arrangement. In fact, there is no reason or motivation for Alexander to determine “whether a cell in a channel grid of the program guide has been highlighted” or “whether a cell in a program grid of the program guide has been highlighted” because Alexander does not differentiate between a channel grid and a program grid of the program guide, as in the present claimed arrangement. Therefore, as there is no reason for Alexander determine “whether a cell in a channel grid of the program guide has been highlighted” and determine “whether a cell in a program grid of the program

guide has been highlighted,” Alexander does not disclose or suggest “continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted, upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in claim 1 of the present arrangement.

The Examiner argues that Alexander anticipates the claimed features of the present invention. Appellants respectfully disagree. The Office Action argues that in Alexander, a “user initially selects a channel from the channel grid of the EPG which causes the PIP window to display the corresponding program. The user then selects the lock function which locks the POP window from displaying any other content which the user selects in the EPG. Thereafter, the user clicks on programs which have no effect on the video displayed in the PIP video. Afterwards, the user selects the unlock function and then selects a different channel in the channel grid which causes the video in the PIP window to change to the video currently being transmitted on the selected channel.” Although Alexander may “lock” onto a program/channel in the PIP window so that no other channel can be selected to be displayed until the lock is removed, Alexander neither discloses nor suggests “continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming

content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is **highlighted**” as recited in claim 1 of the present arrangement. The locking and unlocking in Alexander is based on a user selecting either the lock or unlock feature. This is wholly unlike the claimed arrangement which continues “to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” and “upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed.” Alexander is completely unrelated to and does not disclose or suggest the features of the claimed arrangement.

Moreover, Alexander does not disclose or suggest “upon **highlighting the different cell** in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in claim 1 of the present arrangement. As argued in the Office Action, once a lock is made to a certain channel for a PIP display in Alexander, the PIP channel being displayed does not change. If the lock is removed, the PIP will display the selected channel as a user scrolls through an EPG. However, locking onto a channel and then unlocking it is not the same as “continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue

to be displayed **until a different cell** corresponding to a different channel in said channel grid is **highlighted**” as recited in claim 1 of the present arrangement. Additionally, in Alexander, a user merely scrolls through channels and displays programs in the PIP display as he/she selects a particular channel/program in an unlocked mode. Therefore, Alexander neither discloses nor suggests “upon highlighting the different cell in said **channel grid**, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in claim 1 of the present arrangement. As the channel grid and program grid in Alexander are not distinct and operate in the same manner, Alexander does not disclose or suggest the features of the claimed arrangement.

The present claimed arrangement provides for display of program content based on a highlighted cell in either a program or channel grid and not based on the status of a locked and unlocked function mode. Alexander clearly does not make this distinction. In the present claimed arrangement, a user may tune to “‘Terminator 2’ on HBO, channel 105 ... when a user first entered the surf guide mode. Subsequently ... if a user moves the highlight or focus of the cursor up or down ... to another channel number/name of the program guide, the ARM microprocessor ... will cause tuner 301 to tune to the highlighted channel and display the received video image on window 230. This is also illustrated in Fig. 5B, which shows that the user has caused the highlight to move the channel 104/Headline News, and therefore, the currently received video content 210, corresponding to the show ‘Washington Weekly’ of channel 104 is now being shown on window 230 ... On the other hand, if a user moves the highlight or

cursor from a grid in the channel axis 213 to one of the grids indicating a program (e.g., 250, 260 or 270), or moves the highlight or cursor within the grids indicating programs, the video content of window 230 stays locked to the last program being displayed ” (Specification, page 17, lines 2-19). In this way, there are “two modes of operation for a program guide and a video window depending on the position of a highlight or cursor. When the cursor or highlight is moved to a **channel name/number grid**, the video window will display program content of the program currently being received by the highlighted channel. On the other hand, when the cursor or highlight is moved to a **program grid**, the content of the video window does not change” (page 17, lines 26-32). This is evident in claim 1 which recites “continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” and “upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed.” Alexander does not continue to display the same program content “if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” or display “the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted” when a different cell is highlighted.

In Alexander, both the channel grid and the program grid operate in the same manner in locked and unlocked states. The operation of the invention of Alexander does not distinguish between whether a cell is highlighted in the channel grid or whether a cell is highlighted in the program grid (as claimed in Claim 1). That is, that Alexander considers only the case of whether a user has manually locked or unlocked a view for the PIP (as acknowledged in the Examiner's comments in the Office Action, page 2, point 2, from March 24, 2008). The operation of Alexander will therefore operate the same way whether a cell in the channel grid is highlighted or whether a cell in the program grid is highlighted, where the condition which determines whether the channel contents in the PIP will change will be depend on whether the apparatus is in a locked or unlocked mode, versus having "the same programming content will continue to be displayed until a different cell corresponding to a different channel in said *channel grid* is highlighted" as in claim 1.

This is wholly unlike the present claimed arrangement which continues "to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted" and "upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed" as recited in claim 1 of the present arrangement.

Therefore, Alexander neither discloses nor suggests “displaying, in response to the previous determining steps, program content of a program currently being received by a channel indicated by the highlighted cell in the channel grid, if the cell in the channel grid of the program guide has been highlighted; and continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted” as recited in claim 1 of the present arrangement. Additionally, Alexander neither discloses nor suggests that “upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in amended claim 1 of the present arrangement.

Additionally, the present claimed arrangement “provides two modes of operation for a program guide and a video display depending on the position of a highlight, cursor or focus. When the cursor, highlight or focus is moved to a channel name/number grid, the video display will display program content of the program currently being received by the highlighted channel. On the other hand, when the cursor, highlight or focus is moved to a program grid, the content of the video window dose not change” (Specification, page 3, lines 7-13). In this manner, the present claimed arrangement “recognize[s] that it may be desirable to have both the locked and locked display modes when a user is using a program guide to channel surf, especially without the need for additional user set up or any

extra key presses” (page 3, lines 1-4). Therefore, the present claimed arrangement continues “to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted” and continues to display the programming content “until a different cell corresponding to a different channel in said channel grid is highlighted.” When the “the different cell in said channel grid” is highlighted, “the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed” as recited in claim 1 of the present arrangement. In this manner, the present claimed arrangement recognizes the need for a simpler program and channel grid that can recognize when a user wishes to change or tune a channel and when a user wishes to scroll through the program guide without changing the currently watched program. The system of Alexander is unable to perform these features as the system of Alexander merely allows a user to place a lock or unlock onto channels. Consequently, it is respectfully requested that the rejection of claim 1 under 35 U.S.C. 102(b) should be withdrawn.

Appellants therefore assert that claim 1 is patentable. In addition, Appellants assert that claim 7 is patentable for the same reasons given above for claim 1, and that dependent claims 2-6 and 8-13 are patentable, as such claims depend on allowable claims 1 and 7, respectively.

VIII. CLAIMS APPENDIX

A complete listing of the claims involved in this appeal is attached hereto as Appendix A.

IX. EVIDENCE APPENDIX

Appellant does not submit any additional evidence and, therefore, an Appendix B is hereby attached indicating "none."

X. RELATED PROCEEDINGS APPENDIX

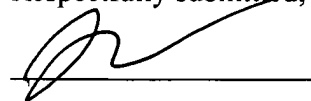
Appellant states that there are no relevant related proceedings and, an Appendix C is hereby attached indicating "none."

XI. CONCLUSION

The Examiner has not shown in the cited prior art where one may find support for rejections of the pending claims on Appeal. There is simply no disclosure/support pointed out by the Examiner that is even relevant to the features positively recited in claims 1-13. Appellants submit that the rejections are traversed and overcome, in light of the arguments presented above.

The allowance of all claims on Appeal is therefore respectfully requested.

Respectfully submitted,



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Date: July 21, 2009

Patent Operations
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Attachments:

Appendix A: Claims on Appeal
Appendix B: Evidence
Appendix C: Related Proceedings

APPENDIX A
CLAIMS ON APPEAL

The following is a listing of all claims, pending, withdrawn or canceled, incorporating all elements and revisions to date. All non-canceled claims are on appeal, canceled and withdrawn claims being canceled or withdrawn without prejudice or disclaimer.

1. (Rejected) A method of processing a program guide, comprising the steps of:

determining whether a cell in a channel grid of the program guide has been highlighted;

determining whether a cell in a program grid of the program guide has been highlighted;

displaying, in response to the previous determining steps, program content of a program currently being received by a channel indicated by the highlighted cell in the channel grid, if the cell in the channel grid of the program guide has been highlighted; and

continuing to display the same program content, in response to the previous determining steps, if the cell in the program grid of the program guide has been highlighted, wherein the same programming content will continue to be displayed until a different cell corresponding to a different channel in said channel grid is highlighted, upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed.

2. (Rejected) The method of claim 1 wherein the program content is displayed in a window.

3. (Rejected) The method of claim 2 wherein the video window is shown along with the program guide.

4. (Rejected) The method of claim 1 wherein the determining steps are entered into in response to a user selecting a user selectable option.

5. (Rejected) The method of claim 4 wherein the channel grid comprises at least one of channel name or channel number.

6. (Rejected) The method of claim 5 wherein the program grid comprises program title.

7. (Rejected) An apparatus, comprising:

- a user control device;

- a display window for displaying a video program;

- a control means for displaying a program guide,

- wherein the program guide including a channel grid and a program grid; and

- wherein the control means providing a first mode of operation in which when a cell in the channel grid is highlighted by the user control device, the display window will display program content of a program currently being received by a channel indicated by the highlighted cell in the channel grid; and a second mode of operation in which when a cell in the program grid is highlighted by the user control device, the program content of the display window does not change, wherein the programming content will continue to be displayed only until a different cell corresponding to a different channel in said channel grid, not the program grid, is highlighted, upon highlighting the different cell in said channel grid, the programming content of a second program which is currently being received by said different channel corresponding to the different cell that is highlighted is displayed.

8. (Rejected) The apparatus of claim 7 wherein the display window is displayed along with the program guide.

9. (Rejected) The apparatus of claim 8 wherein the control means enters into the two modes of operation in response to the user control device.

10. (Rejected) The apparatus of claim 8 wherein the channel grid comprises at least one of channel name or channel number.

11. (Rejected) The apparatus of claim 10 wherein the program grid comprises program title.

12. (Rejected) The method of claim 1 wherein the cells in the program grid and channel grid are independently selectable.

13. (Rejected) The apparatus of claim 7 wherein the cells in the program grid and channel grid are independently selectable.

APPENDIX B

EVIDENCE

None.

APPENDIX C
RELATED PROCEEDINGS


None



CERTIFICATE OF MAILING under 37 C.F.R. §1.8

I hereby certify that this amendment is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

Date: 7/21/09


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